

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI**

DIVISION: 6

By HON. WARREN R. DARROW

CASE NO. P1300CR20081339

JEANNE HICKS, CLERK

By: Heather Smith, Deputy Clerk

DATE: September 14, 2010

FILED

DATE: 09/14/10

8:35 O'Clock A.M.

JEANNE HICKS, CLERK

BY: HEATHER SMITH

Deputy

TITLE:

STATE OF ARIZONA

(Plaintiff)

Vs.

STEVEN CARROLL DEMOCKER

(D-1)

(Defendant)

COUNSEL:

Yavapai County Attorney (e)

(For Plaintiff)

John Sears (e)

Larry Hammond & Anne Chapman (e)

OSBORN MALEDON, P.A.

(For Defendant)

HEARING ON:

Jury Trial – Day 48

NATURE OF PROCEEDINGS

COURT REPORTER

Roxanne Tarn/Kathy Johnston

START TIME: 8:35 a.m.

APPEARANCES: Joseph Butner, Deputy County Attorney
Jeff Paupore, Deputy County Attorney
John Sears, Counsel for Defendant
Larry Hammond, Counsel for Defendant
Anne Chapman, Counsel for Defendant
Steven Carroll Democker, Defendant in Custody

At 8:35 a.m., Court reconvenes with both County Attorneys, all Defense Counsel and the Defendant present, outside the presence of the Jury Panel.

Court indicates a couple of issues which need to be addressed including scheduling and pending motions.

Counsel for Defendant requests he be allowed to brief the issue of the anonymous email and the prejudicial affect on the Defendant and jurisdiction.

Discussion ensues.

Counsel for Defendant requests the Court withhold any ruling at this time to allow more information to be provided.

Court would accept briefing from either party to make a final decision as to the anonymous email.

Parties discuss scheduling.

At 8:51 a.m., Court and Counsel proceed to a sealed portion of the proceedings.

At 8:58 a.m., Court and Counsel continue with the proceedings which are no longer sealed.

Parties continue discussion of scheduling.

Counsel for State to provide a revised witness list of their case in chief, indicating which witnesses are left to testify and a best guess as to when the witnesses will be called by the end of tomorrow.

Counsel for Defendant indicates, they have not received a list of rebuttal witnesses and exhibits.

Counsel for State indicates, at this time, the State is unable to determine who all the rebuttal witnesses are, however; the State has provided some of the possible witnesses' names.

Pursuant to Rule 15.1(h), the State is required to disclose names and address along with statements to Defense and that shall be done promptly.

Court and Counsel discuss the note from a Juror provided this morning.

***** Recess at 9:08 a.m. *****

At 9:20 a.m., Court reconvenes with both County Attorneys, all Defense Counsel, the Defendant and the Jury Panel present.

Gareth Richards is sworn and testifies.

Counsel for State moves for the admission of exhibit 689. Counsel for Defendant objects to page 2 of the exhibit. Counsel for State requests more information of the exhibit from the witness. Court indicates, page 2 of the exhibit will be removed with no objection from either side and the first page will be remarked as exhibit 689. Exhibit 689 is admitted.

Counsel for State moves for the admission of exhibit 3238. Counsel for Defendant has no objection to the admission providing the writing on the back of the exhibit is removed. Exhibit 3238 is admitted providing the writing is removed.

Court offers questions from the Jury Panel.

Court and Counsel meet at sidebar outside the presence of the Jury Panel, off the record, outside the presence of the Jury Panel.

Court relays the questions to the witness.

Witness is excused.

David Mark Day is sworn and testifies.

Counsel for State moves for the admission of exhibit 3239. Counsel for Defendant has no objection providing the writing on the back is removed. Exhibit 3239 is admitted providing the writing is removed.

Counsel for State moves for the admission of exhibit 681. Counsel for Defendant objects. Exhibit 681 is admitted.

Counsel for State moves for the admission of exhibit 682. Counsel for Defendant objects. Exhibit 682 is admitted.

Counsel for State moves for the admission of exhibit 680. Counsel for Defendant objects. Exhibit 680 is admitted.

Counsel for State moves for the admission of exhibit 3240. Counsel for Defendant has no objection providing the writing on the back is removed. Exhibit 3240 is admitted providing the writing is removed.

Counsel for State moves for the admission of exhibit 3241. Counsel for Defendant has no objection providing the writing on the back is removed. Exhibit 3241 is admitted providing the writing is removed.

Counsel for State moves for the admission of exhibit 3265 for demonstrative purposes. Counsel for Defendant has no objection. Exhibit 3265 is admitted for demonstrative purposes.

Counsel for State moves for the admission of exhibits 3262, 3263 and 3264 for demonstrative purposes only. Counsel for Defendant has no objection. Exhibits 3262, 3263 and 3264 are admitted for demonstrative purposes only.

Court reminds the Jury Panel of the admonition. All parties shall return at 11:00 a.m.

At 10:46 a.m., the Jury Panel exits the Courtroom.

Court, Counsel and Defendant remain.

Counsel for Defendant addresses some photographs marked for use with witness, Gilkerson as exhibit 1001.

Counsel believes the photographs are not appropriate pursuant to Rule 403 and are cumulative and redundant.

Court will address this issue after the break.

***** Recess at 10:49 a.m. *****

At 11:08 a.m., Court reconvenes with both County Attorneys, all Defense Counsel and the Defendant present, outside the presence of the Jury Panel.

Counsel have agreed to not have exhibit 1001 admitted into evidence, however; the witness will need to refer to the exhibit during testimony.

Counsel discuss further issues regarding the photos.

Court will review the previous rulings, although the Court believes it is admissible at this time.

Court indicates, it received a note from the Jury Panel requesting clarification of what "Demonstrative Purposes" means.

Court will address the Jury Panel upon the start after the break.

Court exits the Courtroom at 11:32 a.m.

At 11:34 a.m., the Jury Panel enters the courtroom.

Court reconvenes with Both County Attorneys, all Defense Counsel and the Defendant present.

Court informs the Jury Panel of the meaning of demonstrative purposes.

David Mark Day resumes testifying, having previously been sworn.

Court offers questions from the Jury Panel.

Court and Counsel meet at sidebar, off the record, outside the presence of the Jury Panel to discuss questions from the Jury.

Court relays the questions to the witness.

Witness is excused.

Court notes, this is the time for the lunch recess. Court reminds the Jury Panel of the admonition. The Jury Panel shall return at 1:15 p.m.

At 11:52 a.m., the Jury Panel exits the Courtroom.

Thereafter, off the record, the Clerk is directed to remove page 2 of exhibit 689 and return to the submitting party. The Clerk shall then place a new label for exhibit 689 on the remaining page.

The Clerk is also directed to take the copies provided by the State of exhibits 3238, 3239, 3240 and 3241 and replace the documents already marked with the copies. The Clerk shall print a new label and place it on the copies and return the old exhibits to the submitting party.

***** Recess at 11:53 a.m. *****

At 1:20 p.m., Court reconvenes with both County Attorneys, all Defense Counsel, the Defendant and the Jury Panel present.

Eric Gilkerson is sworn and testifies.

Counsel for State moves for the admission of exhibit 3261 for demonstrative purposes only. Counsel for Defendant objects. Exhibit 3261 is admitted for demonstrative purposes only.

Counsel for State moves for the admission of exhibit 740. Counsel for Defendant objects. Exhibit 740 is admitted.

Counsel for State moves for the admission of exhibit 3266 for demonstrative purposes. Counsel for Defendant has no objection. Exhibit 3266 is admitted.

Counsel for State moves for the admission of exhibit 935. Counsel for Defendant has no objection. Exhibit 935 is admitted.

Counsel for State moves for the admission of exhibit 3267. Counsel for Defendant has no objection after conducting *voir dire*. Exhibit 3267 is admitted.

Counsel agree to remove a single page out of exhibit 812. Court allows Counsel to remove the duplicate page.

Counsel for State moves for the admission of exhibit 812. Counsel for Defendant has no objection after conducting *voir dire*. Exhibit 812 is admitted.

Counsel for State moves for the admission of exhibit 368. Counsel for Defendant has no objection. Exhibit 368 is admitted.

Court notes, this is the time for the afternoon recess. Court reminds the Jury Panel of the admonition. All parties shall return in 15 minutes.

Thereafter, off the record, Court directs the Clerk to return the duplicate page out of exhibit 812, removed with Court order, to the submitting party.

***** Recess at 2:42 p.m. *****

At 3:04 p.m., Court reconvenes with both County Attorneys, all Defense Counsel, the Defendant and the Jury Panel present.

Eric Gilkerson resumes testifying, having previously been sworn.

Court offers questions from the Jury Panel.

Court and Counsel meet at sidebar, off the record, to discuss questions from the Jury Panel.

Court relays the questions to the witness.

Witness is excused.

Court reminds the Jury Panel of the admonition. All parties shall return in 15 minutes.

At 3:56 p.m., the Jury Panel exits the Courtroom.

Court indicates, for the record, the off the record discussions were in regards to the jury questions and the attorneys had no objection to any of the jury questions.

Court also notes, a juror has informed the Bailiff, he/she was approached by a person while walking to the parking garage, asking if that juror was on this specific trial and the juror just walked away.

No further information was provided by the Juror. This matter will be further discussed at a later time.

***** Recess at 3:59 p.m. *****

At 4:11 p.m., Court reconvenes with both County Attorneys, all Defense Counsel, the Defendant and the Jury Panel present.

Adam Parent is sworn and testifies.

Counsel for State moves for the admission of exhibit 208. Counsel for Defendant conducts *voir dire* and has no objection. Exhibit 208 is admitted.

Court offers questions from the Jury Panel. Court notes, there are no questions from the Jury.

Witness is excused.

Court reminds the Jury Panel of the admonition. The Jury Panel shall return tomorrow morning at 9:00 a.m.

At 4:20 p.m., the Jury Panel exits the Courtroom.

***** Recess at 4:21 p.m. *****

At 4:31 p.m., Court reconvenes with Counsel for State, Butner and Counsel for Defendant, Sears in chambers to conduct a sealed portion of the proceedings.

Counsel to return tomorrow morning at 8:30 a.m. to discuss legal issues.

cc: Dean Trebesch (Contract Administrator) (PD) (e)
Christopher DuPont, Trautman DuPont PLC,
Counsel for Victims Charlotte and Katherine DeMocker
YCSO – Detention Records (e)
Victim Services (e)
John Napper, Counsel for Renee Girard(e)
Division 6